Supreme Court, U.S.
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No. 01-1021

In The

Supreme Court of the United States

SILVER SPUR RESERVE,
dba SILVER SPUR MANOR,

Petitioner,

v.

THE CITY OF PALM DESERT and
THE PALM DESERT RENT REVIEW BOARD,

Respondents,

THE TENANTS RESIDING AT
SILVER SPUR MOBILE MANOR,

Real Parties in Interest.

On Petition For A Writ Of Certiorari To The Supreme Court Of California

RESPONDENTS' BRIEF IN OPPOSITION

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QUESTIONS PRESENTED

Question Number One: Is the owner of a rent controlled property precluded from recovering attorneys fees under 42 U.S.C. Section 1988, where it has established a violation of its constitutional right to a fair return under 42 U.S.C. Section 1983?

Question Number Two: Does a local rent control ordinance violate the takings or the due process clause of the federal constitution by requiring landlords to lease units at below market rents to tenants who either use them for vacation purposes, or sublease them to others for profit?

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SUPPLEMENTAL STATEMENT OF FACTS

The Respondent has identified a transcription error in the Petitioner's Appendix to Petition for Writ of Certiorari ("Pet. App."). The Opinion of the Court of Appeal should be corrected at page A-30, last line, to include the word "not" as follows: " . . . the ordinance was not unconstitutional. . . . "

REASONS FOR DENYING THE WRIT

I.
QUESTION NUMBER ONE

The first question presented by the Petitioner is whether the owner of a rent controlled property is precluded from recovering attorneys' fees under 42 U.S.C. Section 1988, where it has established a violation of its constitutional right to a fair return under 42 U.S.C. Section 1983. Petition for Writ of Certiorari ("Pet.") at i. The Respondents respectfully urge this Honorable Court to deny the Petition with respect to the first question because, as discussed below, the case is premature, transitory, guided by ample authority, and will result in a fair outcome when fully litigated.

A. This Case Is Not Ripe For Judicial Resolution

The Petitioner contends that "[t]he California Supreme Court's decision in *Galland v. City of Clovis*, 24 Cal. App. [sic] 4th 1003, (2001), is directly contrary to federal statutory and case law, because it results in the denial of attorneys fees under 42 U.S.C. § 1988" and urges

this Court to overrule *Galland*. Pet. at 12, 26. However, Petitioner's argument fails to recognize that under *Galland* a landlord may recover attorneys' fees from its tenants through an administrative adjustment of rental rates and may demonstrate, in accordance with the strictures of this Court, that an award of fees by the state court is warranted. *Galland*, 24 Cal. 4th at 1034, 1040 (discussed below). Both the administrative and judicial avenues for recovery remain available to the Petitioner on remand to the trial court. Court of Appeal Opinion, Pet. App. at A-44 to A-46. The next hearing on the Petitioner's claim for attorneys' fees is scheduled for February 15, 2002. Notice, Appendix to Respondents' Brief in Opposition ("Resp. App.") at 2-3. Therefore, assuming *arguendo*, that the Petitioner has raised sound arguments to challenge California law, the posture of this case is premature for consideration of *Galland*. At this writing, the Petitioner has neither been denied recovery of attorneys' fees nor precluded from obtaining a Section 1988 award.

B. This Case Is Transitory With Limited Reach

Beyond its unripe condition, the Petitioner's argument arises from transitory and narrow circumstances. The Petitioner contends that "[b]ecause . . . *Galland* prevents property owners from recovering attorneys fees unless they first pursue a second set of legal proceedings, *Galland* must be overruled." Pet. at 26. However, the Petitioner's predicament is the result of the *Galland* decision being handed down while the instant case was pending before the Court of Appeal. Letter Brief, Resp. App. at 5-6 and Court of Appeal Opinion, Pet. App. at A-29. Only

the Petitioner and those litigants, if any, whose rent control cases were pending as Petitioner's was will be inconvenienced by extended ("second") proceedings. Thus, the transitory nature and limited reach of the Petitioner's complaint does not compel the attention of this Court.

C. The Authorities Support The Decision Below

The Petitioner contends that *Galland* is directly contrary to federal law. Pet. at i. But, on closer inspection, the contention is unsubstantiated. The Petitioner confuses the right to bring a Section 1983 claim with the discretionary power of the courts to award attorneys' fees pursuant to Section 1988. It cites *Patsy v. Board of Regents*, 457 U.S. 496 (1982) (race and sex discrimination), and *Zinermon v. Burch*, 494 U.S. 113 (1990) (deprivation of liberty), for the proposition that "[Petitioner] is entitled to its attorney's fees under 42 U.S.C. § 1988 regardless of any post deprivation remedy the State of California may provide." Pet. at 17-18, emphasis omitted. *Patsy* and *Zinermon* hold that, generally, a Section 1983 plaintiff need not first exhaust a state's claims procedure before filing the Section 1983 action. *Patsy*, 457 U.S. at 516, *Zinermon*, 494 U.S. at 125. But, *Patsy* and *Zinermon* are distinguished; neither case confers an automatic award of attorneys' fees.

The Supreme Court of California sought and observed the guidance of this Court (and numerous federal and state courts) in fashioning rules to remedy confiscatory rent controls in *Galland* and the earlier case of *Kavanau v. Santa Monica Rent Control Bd.*, 16 Cal. 4th 761 (1997). The *Kavanau* court noted that " '[t]he economic

judgments required in rate proceedings are often hopelessly complex. . . . The Constitution is not designed to arbitrate these niceties.' " *Kavanau*, 16 Cal. 4th at 778, quoting *Duquense Light Co. v. Barasch*, 488 U.S. 299, 314 (1989). The *Galland* court revisited the *Kavanau* reference to *Duquense* and observed that "price control regulation, including rent control, involves a distinct branch of constitutional inquiry under the due process clause." *Galland*, 24 Cal. 4th at 1021. *Galland* and the instant case are distinguished from the authorities cited by Petitioner, namely: *Aware Woman Clinic, Inc. v. Cocoa Beach*, 629 F.2d 1146 (5th Cir. 1980), involving an abortion clinic; *Bly v. McLeod*, 605 F.2d 134 (4th Cir. 1979), involving voting rights; and *New York Gaslight Club, Inc. v. Carey*, 447 U.S. 54 (1980), involving racial discrimination. Instead, the *Galland* court found guidance, for example, "in the field of public utility regulation, [where] the proper remedy for delay in the upward adjustment of rents . . . has been equitable relief to enforce the proper rates, not monetary damages against the regulator." *Galland*, 24 Cal. 4th at 1023, with reference to Priest, *Principles of Public Utility Regulation* 204-06 (1969), and *Smith v. Illinois Bell Tel. Co.*, 270 U.S. 587, 591-92 (1926). When the *Galland* court addressed unreasonable costs in the form of administrative and attorneys' fees, it observed this Court's guidance in the *Zinermon* distinction between substantive and procedural due process claims to determine that such costs were best understood as a matter of substantive due process violations. *Galland*, 24 Cal. 4th at 1030, with reference to *Zinermon*, 494 U.S. at 133-34. The *Galland* court, once again, sought the guidance of this Court for an

appropriate standard for substantive due process violations. *Galland*, 24 Cal. 4th at 1030-31. It began with the recent general standard for assessing substantive due process violations; "executive abuse of power . . . which shocks the conscience." *Galland*, 24 Cal. 4th at 1031, quoting *County of Sacramento v. Lewis*, 523 U.S. 833, 846 (1998). And, after a thorough survey, the *Galland* court adopted the standard used by the D.C. Circuit as one consistent with the *Sacramento* prescription but better suited to a price regulation inquiry; "deliberate flouting of the law." *Galland*, 24 Cal. 4th at 1034, quoting *Silverman v. Barry*, 845 F.2d 1072, 1080 (D.C. Cir. 1988). In short, the Petitioner's assertion that *Galland* is directly contrary to federal statutory and case law is without support. The authorities cited by the Petitioner are distinguished on legal and factual bases. *Galland* is a well reasoned decision, grounded by the principles of this Court.

The Petitioner urges this Court to carve out an "exception where the courts refused to grant a 'stay' of the ordinance" in the event that *Galland* is not overruled. Pet. at 21; see also Pet. at 26-27. However, the Petitioner has not drawn any connection between a stay of the ordinance and the attorneys' fees at issue. Assuming, *arguendo*, that there is such a connection, the facts do not appear to provide strong support for the Petitioner because its request for a stay was not filed until after the trial court hearing. Pet. at 9 and Superior Court Judgment, Pet. App. at A-53. Nevertheless, this issue is facially within the scope of the scheduled hearings and, therefore, does not appear to require an exception to be crafted by this Court.

D. A Fair Outcome Will Result When This Case Is Fully Litigated

Galland is a fair decision and, when the instant case is fully litigated, a fair outcome will result. The Petitioner will have the opportunity in the trial court to frame and pursue its claim for attorneys' fees under the deliberate flouting of the law standard. Court of Appeal Opinion, Pet. App. at A-44 to A-45. The trial court will review the Respondent's conduct which involved the Respondent's evaluation of complex financial information. See P. & A., Resp. App. at 32-68. In the event that no egregious conduct is found under the "deliberate flouting" standard, the Petitioner will have an opportunity to recover attorneys' fees as a business expense to be recaptured through an adequate adjustment of prospective rental rates, under court supervision. Court of Appeal Opinion, Pet. App. at A-45. "[T]his remedy, as opposed to an award of damages against the Rent Board, places the cost of compensating [the landlord] roughly on those tenants who benefited from unconstitutionally low rents." *Galland*, 24 Cal. 4th at 1022. Finally, if an adequate rent adjustment is not made, Petitioner will have an opportunity to recover fees as damages under a procedural due process claim against the Respondent. Court of Appeal Opinion, Pet. App. at A-45 to A-46.

II.
QUESTION NUMBER TWO

The second question presented by the Petitioner is whether a local rent control ordinance violates the takings or the due process clause of the federal constitution

by requiring landlords to lease units at below market rents to tenants who either use them for vacation purposes or sublease them to others for profit. Pet. at ii. "The Petitioner contends the City's rent control ordinance is not rationally related to and/or does not substantially advance any legitimate state purpose with respect to such 'tenants', in violation of the takings and/or the due process clause." Pet. at ii. The Respondents respectfully urge this Honorable Court to deny the Petition with respect to the second question because, as discussed below, the ordinance serves legitimate goals, which are local in nature and the decisions below are correct.

A. The Ordinance Advances Legitimate Interests

To reach its conclusion, the Petitioner misconstrues the intent and implementation of Respondent's rent control ordinance as one "for controlling the rents of vacation homes." Pet. at 25; see also Pet. at ii, 12-13, 23, 26, 27. The Petitioner asserts that the ordinance, so construed, will result in "decreasing the supply of affordable housing" and declares that the result is "wholly irrational" and " 'demonstrably irrelevant' to the [Respondent's] purported purpose." Pet. at 23-24, 26. However, the Petitioner's construction of the rent regulations is myopic.

The Court of Appeal reviewed the ordinance and found that it serves much broader purposes than the Petitioner permits:

> The rent control ordinance, adopted March 27, 1986, states there is shortage of mobilehome spaces in light of the demand, that this inequitable market situation has resulted in low vacancy

> rates and rapidly escalating rents, and that it is necessary to protect the residents of mobilehome parks from unconscionable changes in rental rates and unreasonable changes in park rules. The ordinance was thus intended to alleviate this unequal bargaining situation, while still allowing mobilehome park owners a just and reasonable return on their investment in the property.

Court of Appeal Opinion, Pet. App. at A-26. The ordinance applies to all mobilehome spaces within the Respondent's city. Reply Brief, Resp. App. at 23. Based on a defective premise, the Petitioner's conclusion is likewise defective. Where a similar rent regulation was in dispute, this Court observed that an "[o]rdinance's asserted purpose of preventing 'excessive and unreasonable rent increases' caused by the 'growing shortage of and increasing demand for housing in the [city] . . . is a legitimate exercise of [the city's] police powers." *Pennell v. San Jose*, 485 U.S. 1, 12 (1988).

Furthermore, this Court has granted that "[l]egislative bodies have broad scope to experiment with economic problems." *Ferguson v. Skrupa*, 372 U.S. 726, 730 (1963). And, in the spirit of *Ferguson*, the Supreme Court of California has emphasized that:

> It appears elementary that any complex piece of social or economic legislation will often have unanticipated consequences that can be both beneficial and detrimental, and that the legislative body or the electorate that enacted the legislation must be entrusted to weigh *whatever* harms and benefits result from the legislation in determining whether that legislation should be amended or abrogated. There is simply no

> authority for the proposition that a piece of legislation that advances legitimate goals, but not precisely those goals specified in the preamble, may be struck down by a court as unconstitutional.

Santa Monica Beach, Ltd. v. Superior Court, 19 Cal. 4th 952, 970 (1999).

B. Rent Control Is A Local Concern

The Petitioner protests one narrow consequence of the Respondent's rent control ordinance. That consequence (and others) may well be a matter for the Respondent's body politic to address. But, this local concern simply does not rise to the level of national significance and constitutional importance to which this Court attends.

C. The Decisions Below Are Correct

The courts below gave full consideration to the question presented by the Petitioner and, following an unwavering line of authority, decided correctly. The trial court found that the Respondent's rent control ordinance is constitutionally sound and the Court of Appeal affirmed. Superior Court Judgment, Pet. App. at A-54, Court of Appeal Opinion, Pet. App. at A-28. The Petitioner has challenged one narrow consequence of the regulation. But, it has not credibly challenged the fact that the ordinance serves broad legitimate interests and purposes.

CONCLUSION

For all the foregoing reasons, the Respondents respectfully request that this Honorable Court deny the Petition for Writ of Certiorari.

Respectfully submitted,

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